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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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03/05/2003

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 03/05/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Pri d for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 12/23/02
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-18, & 36-51 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-18 & 36-51 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Pri rity under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 23
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Acti n Summary

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-4, 7, 8, 12, 13, 17, 18, 36, 39, 40, 43-46, 48 and 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoffman et al 6,103,253.

The instant polymer containing triazole particle – propiconazole, flusilazox, bitertanol, penconazole – (claim ~~paragraph~~ ¹¹ 10 or col. 5, lines 48-53) is disclosed, with adjuvants, col. 6.) as suspensions, without having plants. They provide controlled release over the total growing season, providing protection against plant damage, thus although not shown, inherently must be non-phytotoxic else no point to plant protection of a composition remaining the reason on a plant exists. Polymers include wood resin (col. 4, last paragraph, colophony) and plasticizer (col. 6), dispersant's, diluents.

Claims 1-3, 7-12, 15, 17, 18, 36, 39, 43-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoffmann et al 5,914,295.

Biodegradable, natural polymers, thus, non phytotoxic (col. 5, line 65 – line 2, col. 6) and the instant polyoctides (col. 5, lines 48-59) provide matrices for triazole particle fungicide of the instant (col. 6, lines 23-28) claims at the instant size (col. 6) with plasticizers. The fungicides are dispersed evenly, or as a segmented set, the concentration gradient as instantly claimed (col. 8, lines 9-43) Granules are envisioned (col. 8, lines 40-50).

Claims 1-18, 36-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffmann or Hoffmann, in view of admission of known triazoles in specification.

Hoffmann and Hoffmann provide the instant composition (see above) as claimed, but not all triazoles are mentioned. Applicant does show the claimed triazoles are well known (p.2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize triazole fungicidal plant protection, to use a known. Triazole in either of the controlled release forms of Hoffmann, as a function of the fungus of concern, climatic conditions, soil, plant of concern, stage of growth, for example. Motivation to combine Hoffmann with a Triazole is the interest of safe delivery to the plant, of a fungicide to permit plant growth and harvesting of sufficient produce.

It has not clearly been established by objective showing of some unobvious and/or unexpected results that the administration of the particular form of active, carrier, or the particular Locus to be treated provides any greater level of prior art expectation as claimed. Further, applicant has showed no criticality as to the ingredient actives concentrations, ratios or Application.

The selection of each ingredient and form thereof is a result effective parameter chosen to optimize effects, and not a basis for patentability.

Applicant's arguments filed on 11/27/02 have been fully considered but they are not persuasive. Applicants argue none of the references provide the instant composition as now claimed, with 112 rejection also overcome. We do not find this so, as explained in continued rejections.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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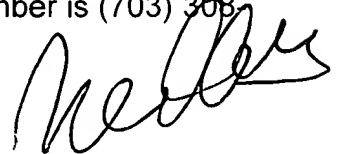
§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on (703) 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.



NEIL S. LEVY
PRIMARY EXAMINER